Reserved.

COURT NO.3

Criminal Revision No.837 of 2001
(Old no.699 of 2000)

Hoshiyal Singh & another ……Appellants

Vs.

State ….Respondent

Hon'ble Irshad Hussain, J:

This is a criminal revision under section 397 read with section 401 of Code of Criminal Procedure against the judgment and order dated 01.05.2000 passed by the Sessions Judge, Pithoragarh in criminal appeal no.14 of 1997, Hoshiyar Singh and others Vs. State of U.P., affirming the conviction and sentence awarded to the revisionists for committing offences punishable under sections 452, 323 and 336 of the I.P.C. The revisionists were sentenced to undergo rigorous imprisonment for one year under section 452 I.P.C., rigorous imprisonment for six months under section 323 I.P.C. and rigorous imprisonment for two months under section 336 I.P.C and all the sentences were directed to run concurrently. Heard Sri P.S. Adhikari, learned counsel for the revisionists and Sri D.K.Sharma, learned A.G.A.

Charges against the revisionists and two others were that they trespassed into the shop of the complainant-victim Pushpa Devi and beat her and another occupant Smt. Mohini Devi by fists and kicks

and by pelting stones as a result of which they sustained injuries at about 6:00 P.M. on 08.03.1988 in the town Aicholi within the circle of P.S. Pithoragarh.

Before the trial court both the injured Pushpa Devi (P.W.1) and Smt. Mohini Devi (P.W.2) supported the prosecution version and reiterated that the revisionists and two others, viz. Mohan Singh and Tej Singh alias Pappu assaulted them and caused them injuries in the shop of one of the victim where these women were carrying on the profession of knitting etc. to earn their livelihood. The injuries sustained by them were proved by Medical Officer Dr. M.D. Bhatt, P.W.3. The defence was that the two women were women of easy virtues and they had some quarrel with a truck driver and its cleaner at the time of the occurrence in front of their house and since the appellants have been reprimanding these women for their immoral activities they have been falsely implicated in this case. In support of the defence version two witnesses Govind Singh Mehar (D.W.1) and Ramesh Chandra Joshi (D.W.2) were examined. The trial court on appreciation of the evidence on record found the evidence of both the injured victims to be reliable and rejected the theory of their involvement or some altercation with any truck driver or cleaner at the time of the occurrence and finding that the revisionists and their companions had assaulted them causing them simple injuries in their shop, the revisionists and their companions were held guilty and convicted. The learned Sessions Judge on appreciation of the evidence on record found himself in agreement with the conclusion arrived at by the learned Magistrate and dismissed the appeal.

Having considered the evidence on record in the light of the arguments made at the bar it need to be pointed out at the outset that there is nothing to indicate that the conclusion arrived at by the appellate court or in any case the trial court is erroneous. Moreover material evidence of the parties was considered and the conclusion is based on appreciation of the evidence on record. There is no merit in the argument that the revisionists were falsely implicated when two victims have had some quarrel with others in connection with their immoral activities. The cross-examination of both the victims does not admit of any such involvement because both of them have categorically stated that they were assaulted by the revisionists and their companions by entering into their shop. The suggestion given to them that they were polluting the atmosphere of the locality itself indicate that the revisionists and their companions have had motive to teach a lesson to the victims by assaulting them. Learned counsel for the revisionists pointed out that the victims P.W. Pushpa Devi gave out that knife was wielded by one of the assailant but absence of any knife injury belie their claim. If is of significance that it was not stated that the blow of the knife had landed on the person of the victim and therefore there was no occasion of receiving any injury of sharp edged weapon by the victims. The credibility of the injured witnesses therefore cannot be said to be untrustworthy. From the material on record it is evidence that in arriving at the conclusion of guilt judicial discretion by the appellate court as well as the trial court has not been exercised arbitrarily or perversely and therefore so far as the finding of guilt is concerned, no interference in the judgment is warranted

under the revisional powers of the court and the judgment and order to this effect of the appellant court deserves to be affirmed.

In regard to the quantum of sentence it was pointed out that other two assailants were let off by giving the benefit of the provision of First Offenders' Act and that considering the nature of the injuries said to have been sustained by the victims and the totality of the circumstances of the case the sentence awarded to the revisionists is excessive. It was also pointed out that one of the revisionists is a bank employee and another is a shopkeeper and they have no previous criminal history to their credit. It was thus submitted that a lenient view need to be taken in regard to the sentence to be awarded against the revisionists. Having considering the facts and circumstances of the case I am of the view that the sentences awarded may be modified suitably.

Revision is partly allowed. Conviction of the revisionists under sections 452, 323 and 336 I.P.C. recorded by the learned Magistrate and affirmed by the learned Sessions Judge in appeal per judgment and order dated 01.05.2000 is upheld. The sentences awarded to the revisionists are modified to the extent that each of them are sentenced to imprisonment for the period already undergone by them and to pay fine of Rs.1500.00 under section 452 I.P.C., find of Rs.500.00 under section 323 I.P.C and fine of Rs.500.00 under section 336 I.P.C. and in default each of them shall undergo rigorous imprisonment for six months under the first count, rigorous imprisonment for three months under the second count and rigorous imprisonment for one month under third count. On realization of fine each of the two victims

Pushp Devi and Mohini Devi shall be paid Rs.1500.00 as compensation.

(Irshad Hussain, J.)

28.04.2003./B.